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(Unlawful Debt Collection Practices)

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3 3. Defendant conducts business in the State of Oklahoma and as such,
4 personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

6
7 **PARTIES**

8 5. Plaintiff is a natural person residing in Marlow, Oklahoma.

9 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.
10 §1692a(3).

11 7. Defendant is a national debt collection company with its corporate
12 headquarters located at 211 Perry Parkway, Suite 6, Gaithersburg, MD 20877.

13 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
14 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

15 9. Defendant acted through its agents, employees, officers, members,
16 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
17 representatives, and insurers.

18
19 **FACTUAL ALLEGATIONS**

20 10. At all pertinent times hereto, Defendant was hired to collect a
21 consumer debt and attempted to collect that debt from Plaintiff.

22 11. The debt arose out of transactions that were primarily for personal,
23
24
25

1 family, or household purposes.

2 12. Beginning in 2008, and continuing through October 28, 2011,
3 Defendant contacted Plaintiff on his home telephone on a continuous and frequent
4 basis in an attempt to collect a consumer debt.
5

6 13. Many of Defendant's telephone calls originated from: (240) 686-
7 0005, which the undersigned confirmed is a telephone number belonging to
8 Defendant.
9

10 14. At times, Defendant contacted Plaintiff with such frequency that he
11 would receive more than two (2) collection calls a day, resulting in Plaintiff
12 receiving more than twenty (20) collection calls a month from Defendant.
13

14 15. Most recently, on October 28, 2011, Defendant contacted Plaintiff on
15 his home telephone.

16 16. When Plaintiff did not answer the telephone, Defendant left a
17 message on his home answering machine. See Exhibit A, Voicemail recording
18 and transcript of Defendant's message to Plaintiff.
19

20 17. In its message, Defendant states that it has a "very important legal
21 matter here." See Exhibit A.
22

23 18. Defendant claimed that, "it is imperative" that Plaintiff "contact"
24 them "back immediately."
25

19. Defendant provided Plaintiff with a "case number" to reference when

1 calling back.

2 20. The clear implication of its statements, including the use of the terms
3 “legal matter” and “case number,” was that Defendant was threatening to
4 commence legal action or had already commenced legal action against Plaintiff.
5

6 21. Upon information and belief, the debt that Defendant was seeking to
7 collect from Plaintiff has been in default since 2005.
8

9 22. The statute of limitations on credit card debt in the State of Oklahoma
10 is five years. See Okla. Stat. 12, §95.

11 23. To Plaintiff’s knowledge, no legal action had been or has been
12 commenced against him.
13

14 24. At the time that Defendant made its statements to Plaintiff, including
15 referring to the debt as a “legal matter” and providing Plaintiff with a “case
16 number,” Defendant could not take legal action against Plaintiff and did not intend
17 to take legal action against Plaintiff.
18

19 25. Also, in its voicemail message to Plaintiff, Defendant states that
20 Plaintiff should contact Defendant in order to “resolve the matter voluntarily.”

21 26. The clear implication from this statement is that if Plaintiff does not
22 respond to the message, Defendant will seek to resolve the matter in a non-
23 voluntary manner, including commencing a legal action against Plaintiff.
24

25 27. Once again, upon information and belief, Defendant did not intend to

1 take and could not take legal action against Plaintiff at the time that it made that
2 threat.

3
4 28. Finally, in its voicemail message to Plaintiff, Defendant failed
5 identify itself as a debt collector or inform Plaintiff that it was attempting to
6 collect a debt.

7 CONSTRUCTION OF APPLICABLE LAW

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9 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
10 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes
11 strict liability, a consumer need not show intentional conduct by the debt collector
12 to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);
13 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
14 unintentional misrepresentation of debt collector’s legal status violated FDCPA);
15 Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

16
17 30. The FDCPA is a remedial statute, and therefore must be construed
18 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235
19 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts
20 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d
21 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA)
22 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in
23 favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

31. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

32. In its actions to collect a debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated the FDCPA generally;
- b. Defendant violated §1692e of the FDCPA when it used false, deceptive, or misleading representations or means in connection

1 with the collection of a debt;

2 c. Defendant violated §1692e(2)(A) of the FDCPA when it
3 misrepresented the legal status of a debt it was attempting to
4 collect;
5

6 d. Defendant violated §1692e(5) of the FDCPA when it threatened to
7 take action that it did not intend to or could not legally take;
8

9 e. Defendant violated §1692e(10) of the FDCPA when it used false
10 representations or deceptive means in an attempt to collect a debt;

11 f. Defendant violated §1692e(11) of the FDCPA when it failed to
12 disclose in communications with Plaintiff that it was a debt
13 collector; and
14

15 g. Defendant violated §1692f of the FDCPA when it used unfair and
16 unconscionable means in connection with the collection of a debt.
17

18 WHEREFORE, Plaintiff, THOMAS WATTS, respectfully prays for a
19 judgment as follows:

20 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

21 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
22 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
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24
25

- 1 c. All reasonable attorneys' fees, witness fees, court costs and other
2 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §
3 1693k(a)(3); and
4
5 d. Any other relief deemed appropriate by this Honorable Court.

6 **DEMAND FOR JURY TRIAL**

7 PLEASE TAKE NOTICE that Plaintiff, THOMAS WATTS, demands a
8 jury trial in this case.
9

10 RESPECTFULLY SUBMITTED,

11
12 Date: December 29, 2011

By: /s/ Tara L. Patterson

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